furter. The resignation of Professor Wyman has necessitated a new arrangement of lectures. In the first-year courses, Professor Joseph Warren will assist Professor Williston in the course in Contracts. In the second-year courses, Professor Beale is to conduct the course in Property in place of Mr. Dutch, while Professor Frankfurter will conduct the course in Public Service Companies. In the third-year courses, Professor Scott will treat the subject of Suretyship and Mortgage, while Professor Pound will replace him in the course in Quasi-Contracts.

It is very pleasant to be able to congratulate Professor Austin Wakeman Scott, A.B., LL.B., and Professor Felix Frankfurter, A.B., LL.B., who have been appointed Professors of Law.

THE AMES COMPETITION. — The radical modifications in the structure of the Ames Competition which have been carried into effect in the present second-year class have already justified themselves in the light of increased interest and activity among the law clubs. In the last competition under the old rules, first and second prizes were won by the Kent and Bryce clubs, respectively. The Board of Student Advisers in charge of the competition this year is composed of Chauncey Belknap, Chairman, Montgomery B. Angell, J. Dwight Dana, Paul Y. Davis, John B. Dempsey, Chester A. McLain, T. Brooke Price and Clarence B. Randall.

To this body has fallen the task of reorganizing the competition along lines which were pointed out by last year's Board. It was felt that a plan which wholly eliminated from the competition more than half of the entering clubs by the end of the first round, failed to give any considerable number of men that training in the argument of cases which it was the chief aim of the competition to afford. As the contests progressed, the great majority of men were soon watching the scoreboard rather than playing the game.

A brief outline of the new rules will show how this objection has been overcome. The competition has been divided into two parts, a qualifying tournament in which each second-year club entering will meet six other clubs, and a third-year elimination tournament which preserves the principle of the old competition, but is restricted to a limited number of clubs which have established the best records during the second year. As will be seen, no club is put out of the qualifying tournament by failure to win a case. As the Ames prizes will be given to the winners of the third-year elimination tournament, they will not be awarded this year.

APPLICATION OF THE POLICE POWER IN THE INSURANCE RATE AND PIPE LINE CASES. — More than twenty years ago Mr. Justice Brewer protested against the doctrine of the Granger Cases [1] in the following words: "It seems to me that the country is rapidly travelling the road which leads to the point where all freedom of contract and conduct will be lost." [2] Two recent cases of far-reaching importance are founded upon an amplification of the principles and reasoning so vigorously de-

[1] Munn *v.* Illinois, 94 U. S. 113; Budd *v.* New York, 143 U. S. 517; Brass *v.* North Dakota, 153 U. S. 391.

[2] See Brass *v.* North Dakota, 153 U. S. 391, 410.

nounced. In the *German Alliance Ins. Co.* v. *Lewis*, 34 Sup. Ct. 612, it was held, the Chief Justice and two of his associates dissenting, that a Kansas statute [3] regulating the rates of fire insurance companies was not an unconstitutional taking of property without due process of law.[4] The Pipe Line Case sustains the constitutionality of an amendment to the Interstate Commerce Act which placed all pipe lines transporting oil on the footing of common carriers, irrespective of whether they had ever professed to carry for the public.[5] *United States* v. *Ohio Oil Co.*, 34 Sup. Ct. 956.

The instinct of modern lawyers is to regard rate regulation as an anomalous encroachment upon the freedom of the individual, confined by our Constitution to a small class of so-called "public callings" which has definitely ascertained limits. But formerly Parliament [6] and the colonial assemblies [7] regulated wages and prices in many other callings as a common function of government. The abeyance of the power during the first half century of our national existence was due to the dominance of *laissez faire* economics rather than to any constitutional obstacles to its exercise.[8] Regulation persisted, however, in the case of carriers and innkeepers, who in a peculiar sense exacted tribute from the community.[9] When the attempt was made to regulate other employments, the courts at first refused to exert this power of government through the common law, on the ground that they were being asked to extend an anomaly rather than to interpret a principle.[10] But

[3] SESSION LAWS OF 1909, c. 152, § 3. Although, narrowly interpreted, the statute confers this power only with respect to insurance corporations, it is significant that the court makes no attempt to support the statute as an exercise of the legislative power over corporations.

[4] The case was followed and applied to surety and fidelity companies in State *v.* Howard, 147 N. W. 689 (Neb.).

[5] In 26 HARV. L. REV. 631 it was submitted that the amendment was unconstitutional because it applied to "those who merely transport oil produced by their own wells, a proceeding which is hardly opposed to public policy." The Supreme Court excludes this possibility by straining the wording of the statute, and sustains its constitutionality as applied to concerns which transport oil from the western fields to eastern refineries, but by their monopoly of the means of transportation compel producers to sell at the wells.

[6] In an article entitled "GOVERNMENTAL REGULATION OF PRICES," by Eugene A. Gilmore, 17 GREEN BAG, 627, many instances of general price regulation by Parliament are cited. See also BEALE AND WYMAN, RAILROAD RATE REGULATION, § 4.

[7] The following are a few examples of colonial statutes regulating prices: MASS. COLONIAL LAWS (1630), p. 104, wages of labor; *ibid.* (1635), p. 120, and (1675), p. 236, forbidding excessive prices by shopkeepers and merchants; *ibid.* (1645), p. 80, price of beer; *ibid.* (1672), p. 8, price of boards; PLYMOUTH COLONIAL LAWS (1668), p. 156, price of boards; DANE'S AB., VII, p. 39 (1777), elaborate Mass. statute setting wages of labor, etc.; NEW YORK LAWS, 1778, c. 4, wages of farm laborers and mechanics and prices of many articles; GREENLEAF'S LAWS (New York), p. 275, requiring publishers to furnish books at reasonable prices.

[8] There was no constitutional objection to such legislation by the states prior to the Fourteenth Amendment. With the Fifth Amendment in force Congress authorized the city of Washington "to regulate the sweeping of chimneys; . . . and to fix the rates of fees therefor." 3 STAT. 587, § 7.

[9] For instances, see Commonwealth *v.* Shortbridge, 3 J. Marsh. (Ky.) 638; MASS. STAT. (1845) c. 191, § 2.

[10] In the following cases the courts refused to compel gas companies acting under a permissive charter to serve all who applied at a reasonable rate: Paterson Gas Co. *v.* Brady, 3 Dutch (N. J. L.) 245 (1858); McCune *v.* Norwich Gas Co., 30 Conn. 521 (1862); Com. *v.* Lowell Gas Co., 12 Allen (Mass.) 75 (1866). Perhaps the thoroughly

where the public need was manifest and urgent, a fanciful resemblance to the innkeeper or the carrier was often worked out to sustain the constitutionality of regulation by the legislature. Examples of this are to be found in the familiar straining of facts to find a "dedication" to the public; [11] the argument that rates could not be regulated unless the business enjoyed eminent domain; [12] and other instances of artificial reasoning which have continued down to the dissenting opinions in the Pipe Line and Insurance Rate [13] cases.

The significance of the two principal cases is that they discard the formal, threadbare analogy to carrier and innkeeper. The right to regulate prices is restored to its place as a branch of the police power of state and nation.[14] In a previous case the Supreme Court had disapproved of any restriction of the police power to legislation promoting public health, morals and safety, and declared that it may be "employed in aid of what is held by the prevailing morality or strong and preponderant public opinion to be greatly and immediately necessary to the public welfare." [15]

The apparently wide latitude for price regulation which such an elusive criterion permits might seem to confirm the fears of Mr. Justice Brewer. But a study of the court's method in approaching the insurance rate problem [16] is reassuring as a concrete demonstration of the advantages of such a test. The court, after overthrowing former tests, cited many statutes as evidencing a "strong and preponderant public opinion" that the situation demanded governmental regulation,[17] and

anachronistic insurer's liability which was imposed on innkeepers and carriers influenced the courts to think of all their other exacting duties as outgrown historical survivals.

[11] Conspicuous in Munn *v.* Illinois, 94 U. S. 113; and see comment in FREUND, POLICE POWER, § 372. In the Insurance Case there was no tangible property to be "dedicated" to the public aid, and in the Pipe Line Case there was an express exclusion of the public.

[12] Whereas the right of a business to eminent domain is itself dependent on the same considerations as the liability to price regulation. See Harding *v.* Goodlett, 3 Yerg. (Tenn.) 41; Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

[13] The following passage in this opinion strikingly exhibits the constraints of the old analogies: ". . . as further pointing out the characteristics of the public use justifying the fixing of prices, it will be noted that, with the exception of toll mills . . . they all have direct relation to the business or facilities of transportation or distribution. . . . They appear to be grouped around the common carrier as the typical public business."

[14] Wm. Draper Lewis, in 21 HARV. L. REV. 609, distinguished the police power from the power to regulate prices, on the ground that the police power may be exercised without providing compensation for injury done, while price regulation must be reasonable. But the limits of the police power in a particular case are determined by the extent of the public welfare, which would not be served by requiring carriers, innkeepers or insurance companies to do business at less than a reasonable rate.

[15] See Noble State Bank *v.* Haskell, 219 U. S. 104, 111. *Cf.* Mutual Loan Co. *v.* Martell, 222 U. S. 225, 237.

[16] See 26 HARV. L. REV. 631 for a discussion of the Pipe Line Case after the decision in the lower court.

[17] The following cases either sustain or assume the constitutionality of statutes regulating insurance: restricting the business to corporations — People *v.* Loew, 19 Misc. 248, 44 N. Y. Supp. 42; Com. *v.* Vrooman, 164 Pa. St. 306, 30 Atl. 217; State *v.* Ackerman, 51 Oh. St. 163, 37 N. E. 828; prescribing standard policies — Orient Ins. Co. *v.* Daggs, 172 U. S. 557; N. Y. L. Ins. Co. *v.* Hardison, 199 Mass. 190, 85 N. E. 410; Nalley *v.* Home Ins. Co., 250 Mo. 452, 157 S. W. 769; prohibiting discrimination, — People *v.* Hart L. Ins. Co., 252 Ill. 398, 96 N. E. 1049; N. A. Ins. Co. *v.* Yates, 214

the reasonableness of this dominant opinion is shown by an analysis of the business itself. Every prudent member of the community, for whom insurance in some form has become a necessity, is at the mercy of a few powerful corporations which frequently act in concert to extort unreasonable rates.[18] Here is a situation which amply justifies regulation as far as it has gone, and, the court concludes, measuring the limits of the power by the extent of the public needs, "How can it be said that fixing the price of insurance is beyond that power and the other instances of regulation are not?"

No legislative fiat can force a business into the province where this power is operative, for the elements which warrant its exercise are beyond legislative control. Few employments are of such intrinsic public importance as to make regulation of their prices essential to the public welfare. But in the light of these decisions it must be clear that abstract principles of liberty and antiquated economic theories can no longer be invoked to justify the abuse of an economic advantage, however honestly it may have been acquired.

THE DISSOLUTION OF THE INTERNATIONAL HARVESTER COMPANY. — Two things are forbidden in the two famous opening sections of the Sherman Act, — combination in restraint of trade, and monopoly.[1] Prior to 1910 these vital words in the statute were confined to their strict linguistic value and no more, and there are extreme authorities from that period to the effect that any cutting down of competition whatever is *ipso facto* illegal if the result of combination.[2] But in 1910 the Supreme Court of the United States by its decisions and *dicta* in the Standard Oil and Tobacco cases wrought a profound change in what was generally understood to be the law, and declared illegal only those combinations which diminish competition and at the same time either in purpose or result jeopardize the business welfare of the general public or of private individuals.[3] In both decisions the key-note is the defendant's unfair methods and abuse of power; in other words, the statute was interpreted in the light of the "rule of reason."

If combinations in restraint of trade as prohibited by the first section of the Act are to be tested by this new standard, it is difficult to find an

Ill. 272, 73 N. E. 423; Equitable L. Assurance Soc. *v.* Com., 113 Ky. 126, 67 S. W. 388; providing for increased recovery penalty in case of rate agreements — German All. Ins. Co. *v.* Hale, 219 U. S. 307; regulating rates — Citizens' Ins. Co. *v.* Clay, 197 Fed. 435.

A statute requiring insurance companies to charge reasonable rates has been in force in New Hampshire for fifteen years, but has apparently never been passed upon in the courts. NEW HAMPSHIRE LAWS, 1899, c. 85, § 1.

[18] For two instances which have gotten into the reports, see Bell *v.* Louisville Board of Fire Underwriters, 146 Ky. 841, 143 S. W. 388; State of New Jersey *v.* Fireman's Ins. Co., 74 N. J. E. 372, 73 Atl. 80.

[1] Chap. 647, LAWS OF 1890; 26 U. S. STAT. AT LARGE, 209; 1 REV. ST. U. S. SUPP., 2d ed., 762.

[2] United States *v.* Joint-Traffic Association, 171 U. S. 505; United States *v.* Trans-Missouri Freight Association, 166 U. S. 290.

[3] Standard Oil Co. *v.* United States, 221 U. S. 1. See especially the dissenting opinion of Harlan, J., which is based on the argument that the Supreme Court is reversing itself. United States *v.* American Tobacco Co., 221 U. S. 106. See article by Robert L. Raymond, 25 HARV. L. REV. 31.